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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/022,423	12/20/2001	Harold M. Forman	5021 D1	4927

7590 09/17/2004
WALTER B. UDELL
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QUAKERTOWN, PA 18951

EXAMINER

FERGUSON, LAWRENCE D

ART UNIT	PAPER NUMBER
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1774

DATE MAILED: 09/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/022,423

Applicant(s)

FORMAN ET AL.

Examiner

Lawrence D. Ferguson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 June 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5 is/are rejected.
- 7) ☒ Claim(s) 6-12 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 December 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Response to Amendment

1. This action is in response to the amendment mailed June 14, 2004.

Claims 1-12 are pending.

Claim Rejections – 35 USC § 103(a)

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Griesbach et al. (U.S. 4,823,961).

Griesbach discloses a reclosable flexible package having a reclosable seal with interlocking closure strips, where the strips are adjacent and parallel to and extending substantially the length of one edge of the layered film of the packaging material (column 2, lines 26-50). Griesbach does not show that the packaging material has constant thickness and width as in instant claim 1. However, such features are properties which can be easily determined by one of ordinary skill in the art. With regard to the limitation of the thickness and width, absent a showing of unexpected results, it is

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obvious to modify the conditions of a composition because they are merely the result of routine experimentation. The experimental modification of prior art in order to optimize operation conditions (e.g. thickness and width) fails to render claims patentable in the absence of unexpected results. All of the aforementioned limitations are optimizable as they directly affect the durability of the packaging material. As such, they are optimizable. It would have been obvious to one of ordinary skill in the art to make the flexible packaging material with the limitations of the thickness and width since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 USPQ 215 (CCPA 1980).

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Griesbach et al. (U.S. 5,050,736) is relevant because it discloses a reclosable package comprising interlocking closure strips (abstract). Additionally, Williams (U.S. 5,058,761) discloses reclosable packages having a strip and flexible lid (abstract).

5. Claims 6-12 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

6. Arguments to rejection made under the judicially created doctrine of obviousness-type double patenting is withdrawn due to the present application being a division of U.S. Patent No. 6,371,644. Applicants arguments to rejection made under 35 U.S.C. 103(a) as being unpatentable over Griesbach et al. (U.S. 4,823,961) has been considered but is unpersuasive. Applicant argues the instantly claimed invention are directed to packaging material where Griesbach does not describe or claim packaging material. Examiner respectfully disagrees because Griesbach discloses packaging material in column 2, lines 31-34 and column 3, lines 8-12). Applicant further argues Griesbach does not disclose a discrete strip of substantially constant thickness flexible material. Examiner maintains although Griesbach does not show that the packaging material has constant thickness and width as in instant claim 1, such features are properties which can be easily determined by one of ordinary skill in the art. With regard to the limitation of the thickness and width, absent a showing of unexpected results, it is obvious to modify the conditions of a composition because they are merely the result of routine experimentation. The experimental modification of prior art in order to optimize operation conditions (e.g. thickness and width) fails to render claims patentable in the absence of unexpected results. All of the aforementioned limitations are optimizable as they directly affect the durability of the packaging material. As such, they are optimizable. It would have been obvious to one of ordinary skill in the art to make the flexible packaging material with the limitations of the thickness and width since it has

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been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 USPQ 215 (CCPA 1980). Applicant argues the use of a discrete strip of substantially constant thickness strips would render the Griesbach packages useless in their intended purpose. Intended use is of little consequence and is given little patentable weight. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963).


Conclusion

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lawrence Ferguson whose telephone number is 571-272-1522. The examiner can normally be reached on Monday through Friday 9:00 AM – 5:30PM.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena Dye, can be reached on 571-272-3186. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Lawrence Ferguson
Patent Examiner
AU 1774



RENA DYE
SUPERVISORY PATENT EXAMINER
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